IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/10/2003

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ.

CIVIL REVISION PETITION(PD)NO.1739 of 2003
AND
C.M.P.NO.12820 of 2003

Karuppa Padayachi .. Petitioner

-Vs-

Jayachandran .. Respondent

Civil Revision Petitions filed under Section 115 of C.P.C. as stated therein.

!For Petitioner .. Mr.R.Sekar
for M/s Sarvabhauman Associates

^For Respondent .. Mr.S.Saravanakumar.

:O R D E R

This Civil Revision Petition is directed against the fair and decretal order dated 31.7.2003 made in I.A.No.357 of 2003 in O.S.No.263 of 2000 by the Court of Subordinate Judge, Kallakurichi thereby dismissing the Interlocutory Application filed by the petitioner under Section 151 of the C.P.C. praying to reopen the case for the purpose of marking a hand bill as a document.

2. Today, when the above Civil Revision Petition was taken up for consideration in the presence of the learned counsel for the petitioner and the learned counsel for the respondent, the learned counsel for the petitioner would submit that the petition was filed under Order XIII Rule 5 C.P.C. to receive the hand bill as a document and to permit the petitioner to mark it as an exhibit; that the learned Subordinate Judge has passed an order without adhering to the ratio of the decision of the Hon'ble Supreme Court of India reported in (2001)3 SCC (1); that the appreciation of the evidence by the learned Subordinate Judge is perverse and unsustainable in law; that the learned Subordinate Judge has erred in holding that there are infirmities in the document sought to be marked. On such grounds, the learned counsel would pray for the relief extracted supra.

3. In the judgment of the Hon'ble Apex Court reported in (2001)3

Supreme Court Cases 1 (Bipin Shantilal Panchal Vs. State of Gujarat and Another), it is held:
"Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence, the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. There is no illegality in adopting such a course."

4. The above judgment cited is relevant only in cases wherein the trial court without being able to take a decision is in the horns of a dilemma and it is not the similar case in hand, wherein based on a hand-bill a suit is sought to be taken on file and it is patent to reveal that no suit could be filed based on such a hand-bill without being in the letter-head or without any of the characteristics of a document and therefore, it is an error apparent on the face of the record and the trial court has right in rejecting the document since it is not case of merely marking the document as ab exhibit but taking the very suit on file based on the document and therefore this Court does not find any valid reason existing to cause its interference into the order passed by the trial court in rejecting the plea of the petitioner and if at all it is entertained it should only be a time consuming affair without achieving anything constructive.

In result,
(i) the above Civil Revision Petition is devoid of
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V.KANAGARAJ,J
merits and the same is dismissed as such;
(ii) the fair and decretal order dated 31.7.2003 made in I.A.No.3 57 of 2003 in O.S.No.263 of 2000 by the Court of Subordinate Judge, Kallakurichi is confirmed;
(iii) however, in the circumstances of the case, there shall be no order as to costs;
(iv) consequently, C.M.P.No.12820 of 2003 is also dismissed.

Index:Yes
Internet:Yes

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To

The Subordinate Judge, Kallakurichi.

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